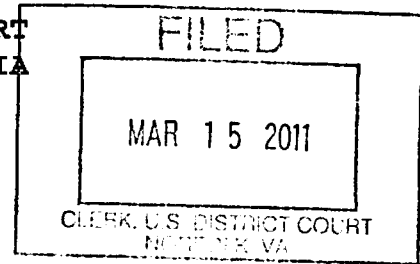


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



MILFORD T. WASHINGTON, NO. 1084114,

Petitioner,

v.

ACTION NO. 2:10cv89

HAROLD W. CLARKE,
DIRECTOR OF THE VIRGINIA
DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

This matter was initiated by a petition for writ of habeas corpus under 28 U.S.C. § 2254 on February 25, 2010. An Answer and Motion to Dismiss was filed by the respondent on August 31, 2010. A Motion for Summary Judgment was filed by the petitioner on August 31, 2010. A Response in Opposition to the Motion to Dismiss was filed by the petitioner on September 20, 2010. The matter was referred to a United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned proposed findings of fact, if applicable, and recommendations for the disposition of the motions.

The United States Magistrate Judge's Report and Recommendation was filed on January 18, 2011. The magistrate judge recommended denying the petition for writ of habeas corpus.

By copy of the report and recommendation of the magistrate judge, the parties were advised of their right to file written objections thereto. The court had received no objections to the magistrate judge's report and recommendation, and the time for filing same had expired. Instead, on February 3, 2011, petitioner prematurely filed a notice of appeal before entry of any final judgment. By Order dated February 28, 2011, the court advised petitioner if he wished to file objections with this court to the report and recommendation, he must do so within ten (10) days from the date of the Order. On March 11, 2011, the petitioner filed his Reply indicating he did not wish to file objections with this court, but noted that he has filed his objections with the Fourth Circuit Court of Appeals.

Accordingly, the court does hereby adopt and approve in full the findings and recommendations set forth in the Report and Recommendation of the United States Magistrate Judge filed January 18, 2011.¹ The petitioner's federal habeas claims in grounds (1), (2), and (4)(i) are **DENIED**, as they are non-cognizable claims and are not reviewable by this court; the ineffective assistance of counsel claim in ground (4)(ii), as regards counsel's failure to move for a mistrial and to request a "deadlocked jury" instruction,

¹While petitioner filed no objection with this court to the magistrate judge's report and recommendation, the court made a full de novo review of the report and recommendation, the supporting pleadings, and the state court records, and found no error.

and the ineffective assistance of counsel claim in ground (3)(A), as related to the cross-examination of Detective Milner, are DENIED as procedurally defaulted; and the remaining/residual claims in grounds (3)(B) and (C) are DENIED, as the state court reviewed the claims on the merits, and this court finds no error in the application of Federal law.²

For the reasons set forth herein and in the report and recommendation, the court finds that petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The appeal of the petitioner filed February 3, 2011, to the Magistrate's Report and Recommendation is duly noted. However, Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

²For clarity in reference, the court has used the delineation of the claims as set forth in the report and recommendation. See Docket #31 at page 3 and note 1.

The Clerk shall forward a copy of this Final Order to all parties of record, and to the Clerk of the Fourth Circuit Court of Appeals.

It is so ORDERED.

/s/
Rebecca Beach Smith
United States District Judge

RBS

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

March 15, 2011